# EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

* * * * * * * * * * * * * * * * * * * * * * * *

THE CITY OF HUNTINGTON,

Plaintiff,

vs. CIVIL ACTION
NO. 3:17-01362

AMERISOURCEBERGEN DRUG CORPORATION, et al.,

Defendants.

_____

CABELL COUNTY COMMISSION,

Plaintiff,

vs. CIVIL ACTION
NO. 3:17-01665

AMERISOURCEBERGEN DRUG CORPORATION, et al.,

Defendants.

* * * * * * * * * * * * * * * * * * * * * * * *

Videotaped and Zoom video conference deposition of JAMES RAFALSKI taken by the Defendants under the Federal Rules of Civil Procedure in the above-entitled action, pursuant to notice, before Jennifer Vail-Kirkbride, a Registered Merit Reporter, on the 11th day of September, 2020.

Q. Would reports written by West Virginia Board of Pharmacy inspectors detailing their on-site inspections of West Virginia pharmacies, including West Virginia pharmacies you talked about, be useful and relevant for you to review in assessing those pharmacies?

Yes or no?

A. I -- it's more complicated than a yes or no. It's a possibility -- [overtalking] it's a possibility they could be relevant, depending on how the assessment or the inspection was done.

Q. Okay.

A. Without being present and having a full knowledge of what they did, I'm familiar with how, you know, my DEA experience was more of a recordkeeping inspection in the State of Michigan, making sure that the records are maintained for, you know, specifically prescriptions and drug storage and records are on-site.

There wasn't -- unless it was a focused investigation in Michigan - I'm only talking about my experience with Michigan and somewhat with Ohio - they weren't typical diversion investigations unless that was their purpose outside of an

but everything -- every little shred and fact of -- is important. I don't want to diminish, but it wouldn't have a high level of relevancy to me.

Q. Would it be relevant to you if one of the pharmacies you talked about was inspected by the West Virginia Board of Pharmacy and they found that there was "no improper dispensing" at that pharmacy? Would that be relevant to you, yes or no?

A. The same as my earlier reply, I -- everything is important, but without being present or knowing exactly, you know, how the investigation is conducted and what they looked at, uhm, I can't make a judgment on that.

Q. Well, would you want to know if one of the pharmacies you talked about, the West Virginia Board of Pharmacy, went there and said, "There is no improper dispensing here," or, "There are no illegal sales here" or "The prescriptions are for a legitimate medical purpose here," would you want to know that, yes or no?

MR. FULLER: Form. You can answer any way that you feel appropriate, Ralph.

MR. SCHMIDT: I am going to note for the record that counsel just instructed the witness

to be evasive, and if it continues we'll raise that.

MR. FULLER: We can call Wilkes now if you want.

Q. Can you answer that, Mr. Rafalski?

A. It's not just a simple yes or no. I really don't know the realm of the type of inspections so for me to say it's essential or not, like I said before, everything is important but it's how -- the level of importance. And I just -- you know, as I answered earlier, I don't know exactly how the inspector, confidence in their capabilities, so it wouldn't be highly relevant, but it's -- it's just another fact.

Q. Okay. And that's shy I am going to ask you to focus on my question. I didn't ask you if it was essential; I didn't ask you if it was relevant. I asked that a moment ago. My question to you is simply: Would you want to know if a West Virginia Board of Pharmacy inspector went to one of the pharmacies you talked about and found that there was, quote, "no improper prescribing" or, quote, "no illegal sales" or that prescriptions were issued, quote, for "legitimate medical purpose," is that something you would want to know in doing your work,

these orders were actually evaluated and the suspicion was eliminated on the first order; correct?

A. Well, I draw my assumption on the due diligence that none of them based on the conduct of the companies in regards to how they evaluated their own suspicious orders and I didn't see -- I saw very limited to know due diligence on their own suspicious orders, so I wouldn't have a high expectation that there would have been due diligence on any of these that were identified by the flag.

Q. Okay. And I want to get away from assumptions and expectations because I don't think that's proper for expert witnesses. I want to focus on what you know and what you've done. Am I correct that in method -- well, do you know -- sticking with Method A, do you know how many of those orders are the first flagged orders and how many are the ones that you just bring along for the ride because of the assumption that there was no diligence to justify later orders for that customer; do you know?

A. The first one is the flagged order.

Q. Do you know how many of the first ones there are, as opposed to the later ones, that are

brought along based on your assumption?

A. For each defendant there is one first order and every subsequent one is flagged if we are talking about Masters A?

Q. Yes, how many first orders?

MR. FULLER: Object to form.

Q. Like, let's take an example of the 11.6 million oxycodone orders for ABDC, how many of those 11.6 million were initial orders and how many of them just came along due to the assumption?

A. One initial order.

Q. And then the remaining 11,610,919 orders were cumulatively flagged?

A. Yes, sir.

Q. Okay. And is that true for every one of your defendants, that there was only one initial order flagged and then every other order you identify was flagged based on the assumption that because there was not diligence on that initial order, the subsequent orders should have been held?

A. So -- just so I'm clear, the totality of all of -- all of the figures here or are we talking about Masters A?

Q. Masters A. Just Masters A.

A. All right. I didn't want to answer incorrectly or make assumptions. The first one on Masters A, each defendant would be yes to that answer, the first one.

Q. Okay. And so am I correct that for Method A, for each defendant there is one, single order that drives the remaining millions of orders that you have flagged?

A. Yes, sir.

Q. And have you looked -- have you identified those single orders for -- in their entirety for McKesson, Cardinal, and ABDC?

A. I don't understand the question, sir.

Q. Have you looked at those initial orders for McKesson, Cardinal, and ABDC that are the initial flagged orders of your Method A?

A. No, sir.

Q. Do you know the diligence that was conducted on those initial flagged orders for McKesson, Cardinal, and ABDC, not having looked at the actual orders themselves?

A. Well, I couldn't know the diligence if I answered I didn't know the orders. And as I answered earlier, understanding your question, I

identified, the millions of orders you identify were actually blocked that if your hypothetical Method A were actually applied ever in the real world, including in Cabell County, can you rule out that some patients would be denied medically necessary prescription opioids? Are you able to rule that out?

A. Well, I think you are asking me --

Q. That's a yes or no question.

A. I don't think it is, Mr. Schmidt, because you're asking me to give a hypothetical answer to a hypothetical question, and --

Q. No, I am not. [Overtalking] Let me ask it again then instead of arguing over the question. Had your Method A been applied and these millions of orders been blocked, do you know one way or another whether that would have resulted in patients in Cabell County being deprived of medically necessary prescription opioids? Do you know?

MR. FULLER: Object to form. Ralph, you can answer the best you can.

A. I didn't do an evaluation on that. I do not know.

A. Yes, maintain -- maintain "of effective controls against diversion of particular controlled substances;" yes, sir.

Q. And then they also failed to construct and operate an appropriate suspicious order monitoring system; is that right?

A. Yes, sir.

Q. And that they each shipped orders that would be determined to be suspicious; is that correct?

A. Yes, sir.

Q. Now, let's talk about what your opinion is and has been related to obligations under the CSA. If an order is determined to be suspicious, it's your opinion that it should be halted; correct?

A. Yes, sir.

Q. And that it also should be reported to the DEA; is that right?

A. Yes, sir.

Q. Now, each registrant has the ability to conduct due diligence on any particular order; is that fair?

A. That's a correct statement. I agree with that.

Q. And then the due diligence can clear up any suspicion; is that true?

A. Yes, sir, that's a --

MR. SCHMIDT: Can I just have a running objection? This is Paul Schmidt. Could I just have a running objection to all of the leading of your witness so I don't have to keep --

MR. FULLER: Absolutely, sure. Sure, no problem.

MR. SCHMIDT: Thank you.

Q. Additionally, the -- I think it was mainly Mr. Schmidt questioned you about this position that you had Mr. McCann run where once an order is triggered, all future orders are triggered because of the lack of due diligence. I think you referenced it in your report, but can you tell me has the DEA taken a position, to your knowledge, on that same compliance requirement?

A. I think they have. I recall the testimony of Mr. Prevoznik in his deposition where he takes that position that once an order is identified as suspicious, that it should be held and shipping should be terminated until the diversion is dispelled, or ruled out.

diligence file; is that correct?

A. Yes, sir. Well, a little more than documented. I guess when you say, "documented," I would expect to be documented, but -- and especially based on the Masters ruling, it's a little more than just documented to say that it occurs. There's some expectation that there'd be a confirmation of those things actually occurring versus just taking the registrant's word for it.

Q. The methodologies, the way you've had them utilized, they identify triggering events and, again, I want to make it clear for the record, you didn't dig down and look at every triggering event in the hundreds of thousands of lines of data that were provided by the defendants and via the ARCOS data; correct?

A. That's correct, sir.

Q. So you can't identify or you didn't go through the line-by-line transactions to identify the suspicious orders, but your methodology was to set out triggers and then with the assumption, identify suspicious orders that should have been reported; correct?

A. Uhm, yes, sir.

A. I would.
Q. You re -- reviewed defendants' experts reports; is that right?
A. Yes, I did.
Q. Do you see anywhere where they pointed to specific sufficient due diligence for any of the customers in Cabell or Huntington?
A. I have not.
Q. There's one thing I want to clear up, too, earlier. When you and Mr. Schmidt were going back and forth about the methodologies and how they worked, I think you indicated for each defendant there may be one triggering order. It would actually be one triggering order for each of their customers; is that right?
A. Yes, sir.
MR. SCHMIDT: Objection. Leading. And I'm just going to note for the record that directly changing the witness's testimony through a leading question is improper.
Q. I think there was also some questions about the code that Mr. McCann did. When you use the term "code" what does that mean, Mr. Rafalski?
A. It's a -- it's an algorithm. It's a series